

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

VIRGINIA GUEVARA,

Plaintiff,

v.

FRANK BISIGNANO,  
Commissioner of Social Security<sup>1</sup>

Defendant.

Case No. 1:22-cv-0490 JLT CDB

ORDER DECLINING THE FINDINGS AND  
RECOMMENDATIONS, GRANTING  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT, AND REMANDING THE  
MATTER PURSUANT TO SENTENCE FOUR  
OF 42 U.S.C. § 405(g)

ORDER DIRECTING ENTRY OF  
JUDGMENT IN FAVOR OF PLAINTIFF AND  
AGAINST DEFENDANT

(Docs. 18, 20, & 23)

Virginia Guevara seeks judicial review of the administrative decision to deny her application for supplemental security income under Title XVI of the Social Security Act. (Docs. 1, 23.) Plaintiff contends the administrative law judge committed harmful error at step two of the sequential evaluation in finding her mental impairments were not severe, and substantial evidence does not support the residual functional capacity because the ALJ had a duty to develop the record. (*See* Doc. 18 at 7, 20-36.) Plaintiff requests the Court remand the matter for further proceedings. (*Id.* at 37.) The Commissioner asserts the Court should affirm the administrative decision. (Doc. 24.)

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<sup>1</sup> Frank Bisignano became the Commissioner of Social Security on May 6, 2025. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Frank Bisignano as the defendant in this suit.

1 The magistrate judge found that “[s]ubstantial evidence supports the ALJ’s determination  
2 that Plaintiff’s mental impairments were not severe.” (Doc. 23 at 9; *see also id.* at 7-10.) The  
3 magistrate judge observed that “[t]he ALJ considered Plaintiff’s medical records, including  
4 multiple reports of ‘no aberrant behavior noted,’ good insight and judgment with normal mood,  
5 and denials of depression.” (*Id.* at 9, quoting AR 16 [Doc. 13-1 at 21].) The magistrate judge  
6 found the medical records cited by the ALJ support the conclusion that “Plaintiff had no more  
7 than a mild limitation in any of the functional areas” under Paragraph B. (*Id.* at 9-10.) The  
8 magistrate judge also reviewed the records identified by Plaintiff and found she did not present  
9 “any evidence from medical sources that [her] impairments impacted her basic work abilities as  
10 required to establish they were severe.” (*Id.*) The magistrate judge determined that “even if the  
11 ALJ erred in finding Plaintiff’s mental impairments were non-severe, any error was harmless  
12 because the ALJ proceeded through the sequential analysis and considered all of Plaintiff’s  
13 impairments in formulating the RFC.” (*Id.* at 11.) Moreover, the magistrate judge observed:  
14 “Plaintiff fails to point to any alleged limitations caused by her mental impairments that the ALJ  
15 failed to consider or include in the RFC.” (*Id.*)

16 The magistrate judge rejected Plaintiff’s assertion that “the ALJ had a duty to further  
17 develop the record because she underwent two surgeries after the state agency consultants’  
18 review of the record.” (Doc. 23 at 10; *see also id.* at 11-13.) The magistrate judge found there  
19 was “nothing in the ALJ’s decision indicating that she interpreted raw medical data or relied on  
20 her own medical judgment in constructing the RFC.” (*Id.* at 12.) In addition, the magistrate  
21 judge determined, there was nothing “suggesting to the Court that the record was ambiguous or  
22 inadequate as would be necessary to trigger the ALJ’s duty to further develop the record.” (*Id.* at  
23 13.) The magistrate judge stated: “[T]he ALJ relied on the state agency medical opinions,  
24 acknowledged Plaintiff had undergone surgeries since the experts reviewed the record and  
25 reported post-surgical leg and tailbone pain, and imposed limitations *greater* than those opined  
26 by the experts based on Plaintiff’s complaints.” (*Id.*, emphasis in original.) The magistrate  
27 judge concluded that because the limitations identified by the ALJ “resulted in a narrower RFC  
28 than that considered by the expert, any alleged error... was harmless.” (*Id.*)

1 Finally, the magistrate judge found the ALJ properly evaluated Plaintiff's subjective  
2 complaints "concerning her ability to sit, stand, and walk." (Doc. 23 at 13-16.) The magistrate  
3 judge observed that "the ALJ credited Plaintiff's testimony and included [a] sit/stand limitation."  
4 (*Id.* at 16.) The magistrate judge determined the ALJ "provided specific, clear, and convincing  
5 reasons for rejecting Plaintiff's testimony that she was more limited in her ability to sit and  
6 stand," including inconsistencies with Plaintiff's own statements regarding improvement after  
7 surgery and "the lack of objective medical evidence to support Plaintiff's complaints." (*Id.*; *see*  
8 *also id.* at 13-15.)

9 The magistrate judge recommended the Court deny Plaintiff's motion for summary  
10 judgment, affirm the ALJ's decision, and enter judgment in favor of the Commissioner. (Doc. 23  
11 at 17.) Plaintiff filed timely objections, arguing the Court should decline the Findings and  
12 Recommendations. (Doc. 25.) The Commissioner filed a response, asserting the magistrate  
13 judge properly addressed the issues raised and maintaining the Court should affirm the  
14 administrative decision. (Doc. 26.)

15 According to 28 U.S.C. § 636(b)(1), the Court performed a *de novo* review of this case.  
16 Having carefully reviewed the entire matter—including Plaintiff's objections and the  
17 Commissioner's response—the Court concludes the findings related to the ALJ's step two  
18 findings and Plaintiff's subjective complaints are supported by the record and proper analysis.  
19 However, the Court finds substantial evidence does not support the physical RFC determination  
20 and the ALJ had a duty to develop the record.

21 After Plaintiff filed her application for SSI benefits, two agency physicians reviewed  
22 available medical records and found Plaintiff was limited to performing light work with  
23 additional postural limitations. (Doc. 13-1 at 26; *see also id.* at 74-76, 92-93.) The ALJ found  
24 the opinions were "unpersuasive," explaining:

25 These opinions are supported by rationale based on a review of the  
26 evidence available at the time of determination but are not entirely  
27 consistent with the evidence showing the claimant had to have  
28 additional limitations that are not work-preclusive given reports and  
numbness and weakness prior to lumbar surgery and post-surgical leg  
and tailbone pain supportive of reduced stand/ walk and a sit-stand  
option, but generally normal strength and gait throughout the record

1 despite pre-surgical positive straight leg raise testing and reduced  
2 cervical, shoulder, and lumbar range of motions.”

3 (*Id.*, citations omitted.) Importantly, the medical opinions of the agency physicians were the *only*  
4 medical opinions in the record. Because the ALJ found both were “unpersuasive,” the magistrate  
5 judge erred in finding the ALJ “relied on” the opinions.

6 As the ALJ acknowledged, after the agency physicians reviewed the available medical  
7 records, Plaintiff had two surgical procedures involving the placement of screws and plates in  
8 her spine. (*See* Doc. 13-3 at 5.) The “multilevel spinal surgery” included “fusion at L5-SQ and  
9 decompressive laminectomy and fusion at L3-4 and L4-5.” (Doc. 13-1 at 24, citations omitted.)  
10 It is undisputed that no physician reviewed Plaintiff’s medical records following the procedures  
11 and offered a medical opinion regarding Plaintiff’s physical limitations and abilities.

12 The Court is unable to find the substantial evidence supports the ALJ’s decision regarding  
13 Plaintiff’s physical RFC given the lack of medical opinions following Plaintiff’s surgical  
14 procedures. Rather, the ALJ’s duty to further develop the record was triggered given the absence  
15 of such an opinion. *See, e.g., Patricia C. v. Saul*, 2020 WL 4596757, at \*22 (S.D. Cal. Aug. 10,  
16 2020) (finding substantial evidence did not support the RFC and the ALJ had a duty to develop  
17 the record where “there [was] no opinion evidence from any treating or examining physician  
18 regarding Plaintiff’s post-surgery functional limitations”), *adopted by* 2020 WL 5423887 (S.D.  
19 Cal. Sept. 10, 2010); *Sepulveda v. Astrue*, 2010 WL 2990111, at \*1 (C.D. Cal. July 28, 2010)  
20 (finding the duty to develop the record was triggered and “the ALJ erred by not ordering [the]  
21 plaintiff to undergo a consultative examination, when the ... medical records did not include an  
22 assessment of plaintiff’s post-surgery functional limitations”); *see also Mendenhall v. Astrue*,  
23 2012 WL 896251, at \*12 (D. Az. Mar. 16, 2012) (“[T]he record is devoid of any assessment from  
24 a medical source of Plaintiff’s physical residual functional capacity post-surgery. The instant  
25 record does not contain adequate medical information from which the ALJ could possibly assess  
26 Plaintiff’s post-surgical physical residual functional capacity.”).

27 Remand for further administrative proceedings is appropriate for the ALJ to develop the  
28 record and make new findings related to Plaintiff’s physical RFC. *See Kail v. Heckler*, 722 F.2d

1 1496, 1497 (9th Cir. 1984); *see also Patricia C.*, 2020 WL 4596757, at \*23 (remanding for  
2 further proceedings where the record was not “fully developed with respect to Plaintiff’s physical  
3 functional limitations after her... surgery”). Accordingly, the Court **ORDERS**:

- 4 1. The Court declines to adopt the Findings and Recommendations (Doc. 23).
- 5 2. Plaintiff’s motion for summary judgment (Docs. 18) is **GRANTED**.
- 6 3. The Commissioner’s request to affirm (Doc. 20) is **DENIED**.
- 7 4. The matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for  
8 further proceedings.
- 9 5. The Clerk of Court is directed to terminate pending motions; enter judgment in  
10 favor of Plaintiff Virginia Guevara and against Defendant Frank Bisignano,  
11 Commissioner of Social Security; and to close this case.

12 IT IS SO ORDERED.

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14 Dated: **September 29, 2025**

  
UNITED STATES DISTRICT JUDGE